

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LATONIA SMITH,

Plaintiff,

vs.

FENNEMORE CRAIG,

Defendant.

Case No.: 2:19-cv-00824-GMN-EJY

**ORDER**

Pending before the Court is Plaintiff Latonia Smith’s (“Plaintiff’s”) Motion to Stay, (ECF No. 86). Defendant Fennemore Craig (“Defendant”) filed a Response, (ECF No. 87), and Plaintiff filed a Reply, (ECF No. 88).

On March 4, 2020, the Court granted Defendant’s Motions to Dismiss, (ECF Nos. 10–11), disposing of all claims in Plaintiff’s Complaint. (*See* Order, ECF No. 83). The Court directed Plaintiff to file an amended complaint addressing the claims dismissed without prejudice within twenty-one days of its Order. (*Id.*). Instead, Plaintiff filed the present Motion, requesting that the Court stay the case pending the outcome of her criminal trial in 2:19-cr-00304-RFB-VCF because she does not have access to “orders, motions, case law, evidence, facts, or a computer” while incarcerated. (Mot. Stay ¶¶ 5–7, ECF No. 86). Defendant counters that Plaintiff has not met the heavy burden required to justify a stay. (Resp. 2:3–5, ECF No. 87).

“A district court has discretionary power to stay proceedings in its own court . . . .” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). When deciding whether to issue a stay, the court must weigh competing interests including: (1) the possible damage which may result from the granting of a

1 stay; (2) the hardship or inequity which a party may suffer in being required to go forward; and  
2 (3) the orderly course of justice measured in terms of the simplifying or complicating of issues,  
3 proof, and questions of law which could be expected to result from a stay. *CMAX, Inc. v. Hall*,  
4 300 F.2d 265, 268 (9th Cir. 1962). The proponent of a stay bears the burden of establishing its  
5 need. *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255).

6 In the present case, Plaintiff has not met her burden of establishing the need for a stay  
7 because she has not demonstrated any hardship that she will suffer by proceeding with the case.  
8 In fact, the only burden identified by Plaintiff is that she does not have access to certain legal  
9 materials while incarcerated, which is not a sufficient reason to order a stay, especially when  
10 Plaintiff has demonstrated no difficulty filing motions and responsive pleadings throughout this  
11 case. *See, e.g., Robben v. Carson City*, No. 3:13-cv-00438-MMD-VPC, 2015 WL 1280726, at  
12 \*3–4 (D. Nev. Mar. 19, 2015) (declining to grant plaintiff’s motions to extend time because  
13 despite plaintiff’s lack of access to resources, such as a law library or computer, he still filed  
14 numerous documents while in custody); (Mot. Stay ¶¶ 5–7).

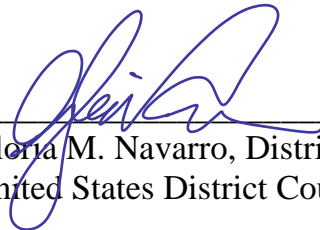
15 Further, to continue with the case, Plaintiff need only file an amended complaint  
16 “contain[ing] sufficient factual matter, accepted as true, to ‘state a claim for relief that is  
17 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*  
18 *Twombly*, 550 U.S. 544, 555 (2007)). As such, Plaintiff need not consult “orders, motions, case  
19 law, evidence . . . or a computer” because she is only required to allege the facts of her case.  
20 (Mot. Stay ¶ 6). Finally, since jury trials in the District of Nevada have been “postponed until  
21 further notice” as a result of the spread of COVID-19, a stay pending the outcome of her trial  
22 would prolong this case indefinitely. (*See* D. Nev. General Order 2020-03).

23 Accordingly,

24 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Stay, (ECF No. 86), is  
25 **DENIED.**

1           **IT IS FURTHER ORDERED** that Plaintiff has twenty-one days from the date of this  
2 Order to file an amended complaint correcting the deficiencies of the claims dismissed without  
3 prejudice in the Court's Order, (ECF No. 83). If Plaintiff elects not to timely amend the claims  
4 dismissed without prejudice, the Court will close the case and enter judgment accordingly.

5           **DATED** this 14 day of December, 2020.

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10           Gloria M. Navarro, District Judge  
11           United States District Court  
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